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SENSITIVE

DEPARTMENT FOR DRL, IO AND WHA/CEN

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SUBJECT: VIVANCO MISSION: STATE OF PLAY

1. (SBU) Summary: Human Rights Watch Latin America Director Jose Miguel Vivanco visited Guatemala February 11-14 to consult with the GOG, the Human Rights Ombudsman, and human rights leaders about the Ombudsman's proposal to create an international Commission to Investigate Clandestine Groups (CICIACS). The Ombudsman and NGO leaders were skeptical of any effort to change the existing proposal; the GOG publicly supported Vivanco's efforts. We expect Vivanco to come back with a modified proposal in early March. End Summary.

FM Welcomes CICIACS Proposal With Reservations

2. (U) On February 14, after meeting with Vivanco to discuss the CICIACS proposal the day before, Foreign Minister Edgar Gutierrez publicly expressed GOG support for what Vivanco will achieve through his consultations. The FM also called the proposal "possible to improve" and gave his own "suggestions:" that the CICIACS be authorized by Congress; that its membership be expanded to include representatives of Congress, the Public Ministry and the Ombudsman; and that its mandate include investigation of crimes implicating private security forces and organized crime, in addition to groups linked to state agents. The Ombudsman promptly replied publicly that Gutierrez' suggestions added nothing to the existing proposal, and human rights leaders said the GOG should now propose the creation of a CICIACS to the UN and OAS.

Vivanco Upbeat Despite Tough Early Rounds with NGOs

3. (SBU) Jose Miguel Vivanco told the Ambassador, HROff, PolCouns, AID officer and PolOff on February 12 that he thought he had allayed human rights groups' concerns about his role as facilitator of the proposal for a commission to investigate clandestine groups and had made some progress as follows.

Process:

-- Vivanco acknowledged that his personal prestige and credibility is on the line, and said the GOG had not yet limited his efforts in any way.

-- Vivanco said he was to meet with the Attorney General later that evening, at the AG's insistent request.

-- He would meet with FM Gutierrez on February 13 to get into the substance of the proposal for the first time since being named as "facilitator" by the GOG.

-- He would leave Guatemala on February 14 and would work on a proposal based on what he has discussed during his visit, in Washington.

-- He will share with us a draft of what he intends to propose, and would appreciate Embassy comment and any suggestions.

-- He will return to Guatemala in early March to press the GOG to accept key elements of a commission.

Substantive Aspects of a Vivanco Proposal:

-- Vivanco said he is willing to disown any effort which is not viable to investigate and lead to criminal prosecution. Anything less would be a "show" and not worth the effort.

-- After consulting with Guatemalan constitutional experts, he believes that legislation, not just a government decree, is necessary to give the commission sufficient authority to survive legal challenges, compel testimony through subpoena, and, possibly, to engage in plea bargaining to build cases.

-- He believes the key elements of any commission must include more prosecutorial expertise at the commissioner level, not just in the technical staff ranks. To do so, he has suggested to NGOs that the commissioners be increased from three to five, to include three nominated by President Portillo from a list of candidates selected by the ombudsman.

The additional two commissioners would be Guatemalan or foreigners with impeccable prosecutorial expertise, "like (Spanish investigative magistrate Baltazar) Garzon," he told NGOs.

-- He believes that the commission must be autonomous but will also need police participation, and suggests a specially vetted group.

-- He has consulted with Peruvian special prosecutor Jose Ugaz, who gave him the idea about including police, as long as they can be vetted.

14. (SBU) Without endorsing his specific proposals, the Ambassador expressed strong support for Vivanco's efforts to put together a proposal for a viable commission. He confided in a short aside to Vivanco that NGOs continue to have misgivings about Vivanco's role, and will be particularly skeptical to any GOG elements (especially police) working with a commission and the proposal to enlarge the commission. PolCouns warned that defining the scope of the investigation will be important and that the GOG may attempt to do so in a manner that protects itself.

#### HR Groups Still Have Misgivings About Vivanco

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15. (SBU) The Ambassador met with human rights leaders (Helen Mack, Frank LaRue, Orlando Blanco, Gustavo Meono, Miguel Angel Albizures, and Nery Rodenas) on February 14 to discuss their views of Vivanco's facilitation efforts. The human rights leaders expressed continued reservations about Vivanco's mission, although LaRue said that they were relieved to have clarified that Human Rights Watch stands behind Vivanco's efforts. They then described the following points of disagreement with Vivanco's suggestions:

a) Commission Composition: increasing the commission members from 3 to 5 would upset the balance envisioned by the NGOs. Instead, they suggest that the Attorney General use his power under Article 44 of the Public Ministry's statutes to make an agreement with the commission that includes the naming of a Special Prosecutor (with commission input) to work with the commission, but not be a member of it. The commission could include distinguished prosecutors or jurists named by the three member institutions (UN, OAS, GOG), and should also hire this expertise for the technical staff level. LaRue added that it would be good if the US could provide staff for this purpose. The commission should not be expanded, which would open it to undue GOG manipulation. Vivanco had suggested that the Special Prosecutor be a full member of the commission, which they reject.

b) Legal Foundation: Helen Mack argued that after consulting with legal experts, the NGOs propose that the GOG negotiate an agreement with the UN and OAS on the creation of the commission (including immunities, scope, composition etc.) and that the Congress ratify the agreement with a legislative accord. This is how MINUGUA and the Historical Clarification Commission were both set up.

c) Initiating Prosecution: LaRue emphasized that the commission must finish its investigation and report before pursuing individual cases. To do the reverse would bog the commission down in legal processes and cripple its ability to complete a full report.

d) Investigation Period: Mack indicated that she thought 18 months would not be enough to complete the investigation, and mentioned a 24-month maximum time period as preferable.

16. (SBU) Meono, who accompanied the Ombudsman on his recent visit to Washington and New York, reported that consultations there with the UN (including the office of the UN High Commissioner for Human Rights), OAS (including someone from the Inter-American Commission on Human Rights), and Department of State were encouraging. Helen Mack said that MINUGUA has been privately very supportive of the proposal.

17. (SBU) The Ambassador told the group that he intends to meet with the Ombudsman to discuss his views and show Embassy support. He also asked the groups to send us the latest copy of their revised proposal as soon possible (Mack later told us she will need more internal discussions before they can send a new document to us.) In response to the Ambassador's inquiry of how we can help:

--Blanco asked that the USG reinforce the urgency of getting a commission started to the GOG. They expect Vivanco to produce a draft by around Feb. 19, and to be back in Guatemala in early March. The GOG should not be allowed to delay its acceptance of a proposal past mid-March.

-- Mack suggested that the Ambassador speak to FM Gutierrez and encourage the GOG to stick with the 3-member commission proposal. Mack also requested that the Ambassador discuss

the proposal with Attorney General de Leon and encourage him to support the idea of entering an agreement with the commission, including the naming of a Special Prosecutor to work with the commission. She suggested the Ambassador emphasize that it is his constitutional obligation to support the commission. LaRue suggested the Ambassador also tell the AG that the commission is not seeking to displace the MP, but to support its work.

Comment

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18. (SBU) Vivanco seemed a little taken aback by the suspicious reception from his friends in the human rights community, commenting that he had been grilled for over an hour about any stipend or per diem he might be receiving. That suspicion is based on the misgivings about the GOG's intentions for the CICIACS proposal more than doubts about Vivanco himself. His exploration of modifications to strengthen the proposal, in his view, only worsened those doubts. Gutierrez' public comments were viewed with the same skepticism. Should he return with a substantially modified proposal, Vivanco may find the human rights groups a harder sell than Portillo. We will do what we can to facilitate the work of the facilitator, once we receive Vivanco's draft.  
HAMILTON